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### REMARKS

#### 1. The Amendments and the Support Therefor

Eight claims (13-20) have been canceled, ten new claims (21-30) have been added, and claims 1, 7, and 11 have been amended to leave claims 1-12 and 21-30 in the application. A PTO-2038 for any newly-submitted claims in excess of the amount previously paid for should accompany this Response, as per 37 CFR §1.16(b)-(d), with the fee due being calculated as follows:

#### FEE CALCULATION

For	Already Paid	No. Extra	Rate (SMALL ENTITY)	Fee (SMALL ENTITY)
Total Claims	22 - 20 =	2	x \$25 =	\$50
Independent Claims	3 - 3 =	0	x \$100 =	\$0
Total:				\$50

No new matter has been added by the amendments or new claims, wherein:

- *Independent claim 1* has been amended to incorporate features shown in FIG. 1;
- *Dependent claim 7* has been amended to incorporate features discussed at page 4 lines 10-19;
- *Independent claim 11* has been amended to incorporate features shown in FIG. 1 and discussed at page 4 lines 10-19;
- *New independent claim 21* finds support in FIG. 1 and at page 4 lines 10-19;
- *New dependent claims 22-23* respectively find support in originally-filed claims 8-9;
- *New dependent claims 24-29* respectively find support in originally-filed claims 1-6; and
- *New dependent claim 30* finds support in originally-filed claim 10.

#### 2. Information Disclosure Statement (Form PTO-1449)

Please note that a Supplemental Information Disclosure Statement (IDS), including a form 1449 with references, was filed on July 24, 2007, after the issuance of the June 1, 2007 Office Action. Kindly take account of the references therein in subsequent examination.

#### 3. Rejection of Claims 1, 4-7, 9, 11, 13, 17, and 18 under 35 USC §102 in view of U.S. Publn. 2002/0058984 to Butaric et al.

Independent claims 1 and 11, as amended, are novel over *Butaric et al.* (and thus so are their

dependent claims 2-10 and 12). To illustrate, *Butaric* does not include a second pattern with separate spaced circumferential hoops, as recited in claim 1. Even if *Butaric*'s diamond mesh was regarded as being formed of joined "zig-zag" hoops, these are not separate spaced hoops. Further, it is in no way obvious to modify *Butaric* to include such separate spaced hoops, since *Butaric*'s reinforcing material would then be formed in separate portions spaced along the length of the *Butaric* stent, allowing them to expand/contract separately (i.e., they would not deploy together), as well as allowing kinks/bends along the length of the stent. Note that all *Butaric* stent embodiments include reinforcing material defined along continuous paths throughout the entire lengths of the stents.

As for independent claim 11 (and also new independent claim 21), these recite stent sections with different oscillating patterns (longitudinal and circumferential), and wherein each stent section does not include reinforcing material formed into the pattern of the other stent section. Here too, even if portions of the *Butaric* diamond mesh are regarded as including longitudinal and circumferential zig-zags, there are no portions of *Butaric* which include the one pattern, but not the other. Further, there is no apparent reason why one would modify *Butaric* to attain the claimed arrangement.

**4. Rejection of Claims 2, 3, 8, 10, 12, 14, 15, 19, and 20 under 35 USC §103(a) in view of U.S. Publn. 2002/0058984 to Butaric et al.**

Kindly reconsider these rejections, which are predicated upon the reasoning that "where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art." This is an improper use of a *per se* rule of obviousness, i.e., relying on a holding in a prior case based on different facts to the current case. This approach is incorrect because it fails to make the fact-intensive inquiry mandated by §103, and it does not show where the prior art would motivate or suggest to one of ordinary skill in the art in question would truly and objectively be led to make the asserted modification or combination. The Court of Appeals for the Federal Circuit has explicitly forbidden the use of *per se* rules in *In re Ochiai*, 37 USPQ2d 1127 (Fed. Cir. 1995):

The use of *per se* rules, while undoubtedly less laborious than a searching comparison of the claimed invention -- including all its limitations -- with the teachings of the prior art, flouts

section 103 and the fundamental case law applying it. Per se rules that eliminate the need for fact-specific analysis of claims and prior art may be administratively convenient for PTO examiners and the Board. Indeed, they have been sanctioned by the Board as well. But reliance on per se rules of obviousness is legally incorrect and must cease. Any such administrative convenience is simply inconsistent with section 103, which, according to *Graham* and its progeny, entitles an applicant to issuance of an otherwise proper patent unless the PTO establishes that the invention as claimed in the application is obvious over cited prior art, based on the specific comparison of that prior art with claim limitations. We once again hold today that our precedents do not establish any per se rules of obviousness, just as those precedents themselves expressly declined to create such rules. Any conflicts as may be perceived to exist derive from an impermissible effort to extract per se rules from decisions that disavow precisely such extraction.

*Id.* at 1133. See also *Litton Systems Inc. v. Honeywell Inc.*, 39 USPQ2d 1321, 1325 (Fed. Cir. 1996) ("As we expressly recognized in *Ochiai*, the obviousness inquiry is highly fact-specific and not susceptible to *per se* rules. The Supreme Court has underscored the fact intensive nature of the test for obviousness."); *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (U.S. 2007) ("To facilitate review, this [obviousness] analysis should be made explicit . . . rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness").

Further, as noted by MPEP 2144.05, which discusses the *per se* rule applied here by the Office Action, the *per se* rule is inapplicable if the claimed parameters are critical, i.e., if the claimed parameters display unforeseen advantages and/or unexpected results. Here, as discussed in the specification (e.g., at page 3 lines 16-19), stents having different sections with different reinforcement patterns are generally avoided because the different sections tend to deform differently, which can cause difficulties. For example, a stent having differently-patterned reinforcement sections may not compress/pack as compactly, and/or the different sections may decompress/deploy differently. The features of most of the claims in question here are directed to features which are believed to reduce these disadvantages. For example, providing different diameters between the stent sections as in claims 2-3 (and claims 25-26) can allow one section to at least partially overlap the other during compression (e.g., the circumferential hoops of one section may at least partially receive the other section), thereby reducing packing size, while at the same time deployment can occur with approximately the same speed/force. The features of claim 8-9 (and 22-23) can allow advantages such as the ones described at page 6 lines 1-9, wherein the sections

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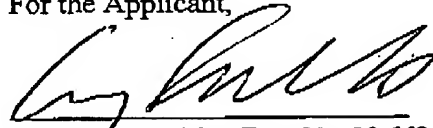
SEP 27 2007

compress/fold in complementary fashion (e.g., with aligned peaks/troughs) to reduce packing size. The foregoing benefits can also be provided or enhanced by the features of claims 10 (and 30). Since the claimed inventions involve more than mere "optimization of ranges," and since the prior art does not truly suggest the recited arrangements (either explicitly or implicitly), the foregoing claims should be deemed unobvious and allowable.

**5. In Closing**

If any questions regarding the application arise, please contact the undersigned attorney. Telephone calls related to this application are welcomed and encouraged. The Commissioner is authorized to charge any fees or credit any overpayments relating to this application to deposit account number 18-2055.

For the Applicant,



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**ATTACHMENTS:**

- PTO-2038 (\$60)